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Rachel Tennis, Esq.
US EPA Region 9
Office of Regional Counsel
75 Hawthorne Street
Mail Code: ORC-3-4
San Francisco, CA 94105

**Re: Yosemite Creek Sediment Superfund Site - Report in Response to
EPA General Notice of Liability**

Dear Ms. Tennis:

This firm is counsel to RWD Associates, LLC ("RWD") with respect to the Yosemite Creek Sediment Superfund Site ("Superfund Site"). We are pleased to submit the enclosed report on RWD's behalf.

RWD is the second-generation owner of 1205, 1301, 1375 and 1335-1339 Yosemite Avenue and 1296, 1320, and 1340 Armstrong Avenue in San Francisco, California ("Subject Property"). RWD's predecessor purchased the Subject Property in the 1950s and operated a wholesale lumber storage yard onsite. In the 1980s, portions of the Subject Property were leased to light industrial businesses, some of which continue to operate today.

This office retained Waterstone Environmental ("Waterstone") to conduct an extensive review of the information available regarding the Subject Property, the Superfund Site, and other nearby properties and industrial uses. After undertaking an exhaustive analysis, Waterstone prepared the enclosed report and concluded that the Subject Property: (1) is not contaminated with the types and concentrations of contaminants found at the Superfund Site; and (2) the Subject Property did not contribute to the contamination at the Superfund Site. This is the same conclusion reached by EPA in its 1993 CERCLA Report. (Report, pp. 20-21, Ecology & Environmental 1993.)

Waterstone's report includes important information never before submitted to EPA. It is unclear why this information was never provided. We suspect that earlier consultants may have believed the information was irrelevant or redundant. However, this information is very relevant

and sheds new light on earlier conclusions proposed by EPA's contractor, Ecology & Environmental ("E&E"). This new information includes:

1. Excerpts from the deposition transcript of Steve Mullinnix. Mr. Mullinnix was the City and County of San Francisco employee onsite during the City's Yosemite Fitch Outfall Consolidation Project ("YFOC"). Mr. Mullinnix's deposition testimony describes in detail the waste and other materials he witnessed during the City's YFOC excavation and trenching activities.
2. The Chain of Custody form from the OW-3 sample taken by L&W Environmental in 1989. The Chain of Custody form proves that the L&W sample was a 100% pure product sample—and not a groundwater sample. The single PCB detection from the Subject Property was not 3,700 µg/L in groundwater as reported by E&E, but rather 3.7 mg/kg 100% product sample.
3. Photographic evidence from RWD's files. Photographs of the City's YFOC sewer upgrade project and receipts for clean crushed rock purchased by RWD's predecessor to cover and protect the Subject Property.

After evaluating this new information, along with the information already available, Waterstone makes the following findings:

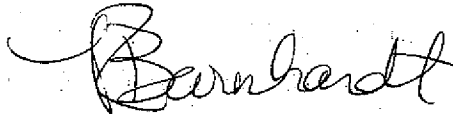
- The only PCB detection ever obtained from the Subject Property was incorrectly categorized as 3,700 µg/L in a groundwater sample by E&E. The correct result was 3.7 mg/kg in 100% pure product sample. This trace detection is very suspect, not reproducible, and likely represents a false positive. (*Section 5.0*)
- EPA's earlier CERCLA reports correctly conclude that the Subject Property is not responsible for the contamination found at the Superfund Site. (*Sections 4.6-4.8*)
- Any contamination on the Subject Property is the result of years of historical Navy infilling of waste and other materials. (*Sections 3.3, 6.1*)
- Immobile trace levels of TPH contamination at the Subject Property have been delineated and do not reach the Yosemite Slough. (*Section 4.2*)
- The Subject Property owners and tenants did not use significant amounts of chemicals. In fact, there is no evidence or other information to suggest that PCBs, metals or lead were used by the Subject Property's owners or tenants. (*Section 2.0*)
- The Subject Property is covered in crushed rock and asphalt and has not eroded into the Yosemite Slough. (*Sections 2.1, 7.1*)

- The Superfund Site is contaminated by other known industrial uses and years of sewer and runoff discharges into the Yosemite Slough. (*Sections 3.5, 6.0*)
- Statements offered by the PRP Group Attorney concerning the Subject Property are factually incorrect and present Subject Property data out of context. (*Section 7.4*)

Waterstone's report clearly establishes that: (1) the earlier information regarding the single PCB detection on the Subject Property is suspect and unsupported; (2) RWD has not contributed to the contamination at the Superfund Site; (3) the Subject Property has not eroded or contributed to contamination via erosion into the Yosemite Slough; and (4) the information provided by the PRP Group Attorney is incorrect and should not be relied upon.

We hope this report is helpful and will assist EPA in its further evaluation of RWD and the Subject Property. We look forward to discussing this report with you at your earliest convenience.

Very truly yours,



REBECCA COUCH BARNHARDT
Jeffer Mangels Butler & Mitchell LLP

Enclosures